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| 10/599,173 | 07/05/2007 | Shinya Nagata | 5553NA3-1 | 5331 |
| 62574 | 7590 | 09/13/2010 | | |
| Jason H. Vick Sheridan Ross, PC Suite # 1200 1560 Broadway Denver, CO 80202 | | | EXAMINER NATNITHITHADHA, NAVIN | |
| | | | ART UNIT 3735 | PAPER NUMBER |
| | | | NOTIFICATION DATE 09/13/2010 | DELIVERY MODE ELECTRONIC |

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

jvick@sheridanross.com

Office Action Summary

Application No.

10/599,173

Applicant(s)

NAGATA ET AL.

Examiner

NAVIN NATNITHITHADHA

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Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 July 2010.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 12, 14 and 16-22 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 12, 14, 16 and 22 is/are rejected.
- 7) ☒ Claim(s) 19-21 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 21 September 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB08)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Paper No(s)/Mail Date _____
- 6) ☐ Other: _____

DETAILED ACTION

Response to Amendment

1. According to the Amendment, filed 07 July 2010, the status of the claims is as follows:

Claims 12 and 16-22 are currently amended;

Claim 14 is previously presented; and

Claims 1-11, 13, and 15 are cancelled.

2. The objections to claims 16-21 are WITHDRAWN in view of the Amendment, filed 07 July 2010.

3. The rejection to claim 18 under 35 U.S.C. 101 as being directed to non-statutory subject matter are WITHDRAWN in view of the Amendment, filed 07 July 2010.

Response to Arguments

4. Applicant's arguments, see Remarks, pp. 8-9, filed 07 July 2010, with respect to the rejection of claims 12 and 14 under 35 U.S.C. 102(e) as being anticipated by Sackner et al, U.S. Patent No. 6,551,252 B1A ("Sackner"), have been fully considered, but they are not persuasive.

As to Claim 12, Applicant contends, see Remarks, p. 9, the following:

No reasonable interpretation of these paragraphs, nor any other paragraph, teaches, suggests, nor discloses the claimed feature of the respiratory information analysis device selecting at least one output of at least one sensor in the chest region and in the abdominal region as specifically recited in the claims.

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However, this argument is not persuasive. Based on broadest reasonable interpretation, Sackner teaches a respiratory information analysis device ("microprocessor unit" or "receiving unit") 3, 33 or 34 that "selects at least one output of at least one sensor in the chest region and the abdominal region", as recited in claim 12, by stating the following (see col. 30, ll. 23-35):

Second, the can be used in selecting a cut and arrangement of a monitoring garment for particular individuals. An individual may wear a multi-band garment for a short time, and the associated processing unit may determine which bands are best at detecting desired physiological parameters. A final garment may then be tailored with a cut, fit, and sensor band location best suited for that individual. This may replace garments fit to be adequate for a range of individuals, though ideal perhaps few or none. Third, a multi-band garment may be worn for regular monitoring, the few actual bands from which data is stored and communicated being selected in real time by the associated microprocessor unit as those with the best signals.

Sackner's microprocessor unit/receiving unit 3, 33, or 34 has the capability of selecting any of the signals received from the different bands based on the situations above. These bands include bands wrapping around the chest region and the abdominal region as shown in figures 1-5.

5. Applicant's arguments, see Remarks, pp. 8-9, filed 07 July 2010, with respect to the rejection of claims 16, 17, and 22 under 35 U.S.C. 102(e) as being anticipated by Sackner et al, U.S. Patent No. 6,551,252 B1A ("Sackner"), have been fully considered, but they are not persuasive.

As to Claims 16, 17, and 22, it is not clear whether Applicant's argument to claim 12 is being applied to claims 16, 17, and 22. Thus, Applicant's arguments do not comply with 37 CFR 1.111(c) because they do not clearly point out the patentable

novelty which he or she thinks the claims present in view of the state of the art disclosed by the references cited or the objections made. Further, they do not show how the amendments avoid such references or objections.

However, if Applicant's arguments to claim 12 do apply to claims 16, 17, and 22, then the rejection is maintained for the same reasons as provided above for claim 12.

6. Applicant's arguments, see Remarks, p. 9, filed 07 July 2010, with respect to the rejection of claims 19-21 under 35 U.S.C. 102(e) as being anticipated by Sackner et al, U.S. Patent No. 6,551,252 B1A ("Sackner"), have been fully considered, and are persuasive. Therefore, the rejection has been withdrawn.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

7. Claims 12, 14, 16, 17, 18, and 22 are rejected under 35 U.S.C. 102(e) as being anticipated by Sackner et al, U.S. Patent No. 6,551,252 B1A ("Sackner").

As to Claim 12, Sackner teaches the following:

A garment 1 for measuring biological information formed of a nonconductive material having elasticity so as to fit on the upper body of an examinee (see col. 13, ll. 28-48, and figs. 1-10),

the garment 1 being characterized in having of respiratory information measuring sensors 4-7, each of said sensors 4-7 including a conductive member 20-25 varying its electric resistance according to variation of constitution of the examinee through breathing thereof under a turning-on-electricity state and capable of delivering electric information based on the variation of electric potential to a respiratory information analysis device 3, 33 or 34 (see col. 11, l. 25, to col. 13, l. 13, col. 13, l. 27, to col. 14, l. 58, and col. 19, l. 55, to col. 20, l. 39),

wherein:

a portion of the plurality of respiratory information measuring sensors 4 are disposed at a perimeter of a chest region and another portion of the plurality of respiratory information measuring sensors 6 are disposed at a perimeter of an abdominal region of the garment (Sackner teaches that "additional sensor bands may be present", see col. 13, ll. 49-66, and col. 30, ll. 10-35) ,

electric resistance of the plurality of respiratory information measuring sensors 4-7 varies with expansion and contraction of one of the length and cross-section of the conductive member 20-25 in response to the examinee's breathing (see col. 13, l. 59, to col. 14, l. 58),

the conductive member 20-25 of each of the respective plurality of respiratory information measuring sensors 4-7 is arranged at either a position

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winding around a chest region of the examinee and a position winding around an abdominal region of the examinee (see figs. 1-5), and

the respiratory information analysis device 3, 33 or 34 selects at least one output of at least one sensor in the chest region and at least one output of at least one sensor in the abdominal region (see col. 27, ll. 27-31, and col. 30, ll. 10-35).

As to Claim 14, Sackner additionally teaches subject matter of the dependent claim 14 (see col. 13, l. 60, to col. 14, l. 17, col. 16, l. 49, to col.17, l. 3, col. 22, ll. 47-60, and col. 25, l. 31, to col. 28, l. 33).

As to Claim 17, Sackner teaches the following:

A respiratory information analysis device comprising:

electric information acquisition means 3 for acquiring electrical information delivered from a plurality of respiratory information measuring sensors 4-7, said sensor 4-7 arranged on a garment 1 for measuring biological information;

electric information comparison means for comparing a plurality of amplitudes of the acquired electric information (see col. 30, ll. 10-35);

electric information selection means for selecting the respiratory information measuring sensors 4-7 detecting a larger amplitude as electric information to be based on an output of respiratory information in accordance with the comparison result of the electric information comparison means (see col. 30, ll. 10-35);

respiratory information analysis means 3 or 33 for judging a variation cycle of the electric information detected with the respiratory information measuring sensors 4-7

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selected by the electric information selection means and analyzing respiratory information in accordance with the variation cycle (see col. 30, ll. 10-35); and

respiratory information output means ("RF transmitter") for outputting respiratory information data in accordance with the analyzed respiratory information (see col. 30, ll. 36-65),

wherein the respiratory information measuring sensors 4-7 are disposed at a perimeter of the chest and a perimeter of abdominal in the garment 1 (see figs. 1-5), and

wherein electric resistance of the respiratory information measuring sensor 4-7 varies with expansion and contraction of one of the length and cross-section of the conductive member 20-25 in response to the examinee's breathing (see col. 13, l. 59, to col. 14, l. 58),

wherein the conductive member 20-25 of the respiratory winding around vicinity of chest of the examinee and a position winding around vicinity of abdominal of the examinee (see figs. 1-5), and

wherein a respiratory information analysis device connectable to the garment selects one of outputs of the sensors of chest and abdominal(see col. 27, ll. 27-31, and col. 30, ll. 10-35).

Sackner additionally teaches subject matter of the dependent claims 19-21 (see col. 13, l. 60, to col. 14, l. 17, col. 16, l. 49, to col.17, l. 3, col. 22, ll. 47-60, and col. 25, l. 31, to col. 28, l. 33).

As to Claims 16 and 18, because the subject matter of claim 17 directed to a device is not distinct from the subject matter of claims 16 and 18 directed to a respiratory information analysis system and a non-transitory computer readable medium, respectively, Sackner anticipates claims 16 and 18 for the same reasons as that provided for the rejection of claim 17 above.

Allowable Subject Matter

8. Claims 19-21 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.
9. The following is a statement of reasons for the indication of allowable subject matter:

As to Claims 19-21, these claims are allowable for the reason provided in the Applicant's Remarks, p. 9, filed 07 July 2010.

Conclusion

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

The other patents cited in the PTO-892 teach subject matter related to the Applicant's claims. The Examiner suggests reviewing these patents before responding to the present Office Action.

11. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to **NAVIN NATNITHITHADHA** whose telephone number is (571)272-4732. The examiner can normally be reached on Monday-Friday, 9:00 am - 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Charles Marmor, II can be reached on (571) 272-4730. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Charles A. Marmor, II/
Supervisory Patent Examiner
Art Unit 3735

/N. N./
Examiner, Art Unit 3735
09/08/2010